

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 197 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

HONOURABLE MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

SAMASTA BRAHMA SAMAJ

Appearance:

Mr. Mihir Thakore, Sr.Counsel with MR MANISH R BHATT
for Petitioner
Respondent No. 1 served.

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE S.D.PANDIT

Date of decision: 30/08/96

ORAL JUDGEMENT (Per S.D.Pandit,J.)

The Income-Tax Appellate Tribunal of Ahmedabad
has referred following questions under Section 256 of the
Income-Tax Act, 1961 to this Court:

1. "Whether, on the facts and in the circumstances of the case and from the evidence on record, the Tribunal was right in law in holding that the assessee trust does not fall under the expression religious community or caste"?
2. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of Sec. 13 (1) (b) are not applicable and the Trust was eligible for exemption under Sec.11 of the Act?

The assessee is a Trust created in the year 1971 and it was registered under the Bombay Public Trust Act, 1950. It was also registered under Sec. 12 A (a) of the Income-Tax Act and the assessee claimed before the Income-tax Officer that the Trust was not created for the benefit of any religion or caste and therefore, the assessee should not be denied the benefit of Sec. 13 (1) (b) of the Income-Tax Act. The said contention of the assessee was accepted by the Income-tax Officer, but the appellate Tribunal did not accept their claim. Consequently, the assessment was computed at Rs.13,540/-. The assessee took up the matter before the A.A.C., who was pleased to allow the said appeal and the appeal preferred by the Department against the said decision of the appellate Assistant Commissioner before the Tribunal was dismissed and hence, the Department has passed the Reference in question.

2. Before going into these questions, it is necessary to see the provisions of Sec. 13 (1) (b) of the Income-tax Act 1961. Sec. 13 (1) (b) reads as under:

Section 13 :

Nothing contained in Section 11 or Section 12 shall operate so as to exclude the total income of the previous year of the person in receipt thereof__

- (b) In the case of a trust for charitable purpose or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste."

Along with the above Section, the provisions of the Trust Deed of the assessee will have also to be taken into

consideration. The Objects of the Trust are enumerated as under:

- (a) To help the deserving students of the Brahmin community including of all its sub-caste and x regional affiliation with books, loans, scholarships, etc. in the field of education within the limitations of funds available with Brahma Samaj.
- (b) To help the deserving and needy members of the Brahmin Community at large with medical aid of all kinds, including of actual finance, implements or drugs.
- (c) to organise training classes for home industries like the preparation of different kinds of condiments, papad sewing, knitting and embroidery works etc. In order to provide avenue of economic income to the members of the Brahmin community.
- (d) To organise lectures classes, camps, seminars etc. of eminent scholars for the religious and spirituals training amongst the Brahmin community. This also includes the arrangement for the publication, activity in the regard.
- (e) To organise a corps of volunteers for the service activities of the Brahma Samaj.
- (f) To make efforts to procure gainful employment for the youths of the Brahma Samaj.
- (g) To undertake any other activities for the social progress of the members of the Brahma Samaj as may be acceded upon from time to time by the executive committee of this institution.

If the above objects of the Trust are taken into consideration, it would be quite clear that the Trust is created only in order to help the Brahmin Community as such. It is not a Trust which is created for the benefit of the community at large, but a particular religion or a caste and consequently, the same falls within the meaning of Sec. 13 (1) (b) which says if an institute is created or established for the benefit of any particular Religious community or caste, then the said Institute cannot claim exemption under Sec. 11 of the Income-tax Act. Therefore, in view of the specific objects

mentioned in the Trust Deed, it is quite obvious that the Institute in question is created and established for the benefit of a particular religious community and caste and consequently is covered by the provisions of Sec. 13 (1) (b). Therefore, we are of the opinion, that the learned Assistant Appellate Commissioner as well as the learned Judicial Member of the Income-tax Tribunal were not justified in holding that the Trust in question is not hit by the provisions of Sec. 13 (1) (b) of the said Act and that the said Trust is exempted under Sec. 11 of the Income-tax Act, 1961.

3. Thus, we accept the reference and decide the questions in favour of the Revenue. We accordingly answer the Reference and direct the parties to bear their respective costs.
